

3 FAM 4170

OFFICIAL CLEARANCE OF SPEAKING, WRITING, AND TEACHING

(CT:PER-760; 12-29-2014)
(Office of Origin: L/EMP)

3 FAM 4171 APPLICABILITY

(CT:PER-584; 11-03-2005)
(Uniform State/USAID)
(Applies to all Employees in the United States and Abroad)

- a. The provisions of this subchapter apply to all employees, including Foreign Service(FS) employees, Civil Service (CS) employees, overseas employees, personal service contractors (PSC's) of State, and USAID, in the United States and abroad, and special government employees as specified in 3 FAM 4172.1-3(E).
- b. The provisions of this subchapter apply to all public speaking, writing and teaching materials of "official concern" (defined in 3 FAM 4172.1-3(A)).

3 FAM 4172 GENERAL POLICY AND PROCEDURES

3 FAM 4172.1 Policy

(CT:PER-584; 11-03-2005)
(Uniform State/USAID)
(Applies to all Employees in the United States and Abroad)

- a. The foreign affairs agencies encourage the participation of their employees in responsible, nonpartisan activities devoted to increasing public study and understanding of the nation's foreign relations. In appropriate circumstances, such activities may be performed in an official or private capacity.
- b. No current or former employee is permitted to publish materials that contain classified information.

3 FAM 4172.1-1 Overview of Procedures

(CT:PER-584; 11-03-2005)

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 3
Personnel

(Uniform State/USAID)

(Applies to all Employees in the United States and Abroad)

- a. These regulations are applicable to all public speeches, writings and teaching materials prepared by employees. Public speeches, writings and teaching materials on matters of "official concern" must be submitted to the appropriate office for review before publication or use. The purpose of such review is to ensure that classified material and other material protected by law are not improperly disclosed, and that the views of employees are not improperly attributed to the U.S. Government. Materials that do not address matters of official concern need not be submitted for review.
- b. Some materials may be prepared by an employee in his or her official capacity, that is, pursuant to official duties. Other material may be prepared by an employee in his or her capacity as a private citizen interested in foreign affairs or other relevant matters. Materials prepared in an employee's private capacity must contain an explicit disclaimer noting that the views expressed are those of the employee and not necessarily those of the employee's agency or the U.S. Government. As detailed below; different standards and procedures govern each of these situations.

3 FAM 4172.1-2 Review of Materials Prepared in an Employee's Official Capacity

(CT:PER-584; 11-03-2005)

(Uniform State/USAID)

(Applies to all Employees in the United States and Abroad)

Public speaking, writing, or teaching materials produced by an employee in an official capacity may be publicly disseminated if approved by the employee's agency pursuant to applicable guidelines, standards, and procedures. (For USAID see Automated Directives System (ADS)).

3 FAM 4172.1-3 Review of Materials Prepared in an Employee's Private Capacity

3 FAM 4172.1-3(A) Materials on Matters of Official Concern

(CT:PER-584; 11-03-2005)

(Uniform State/USAID)

(Applies to all Employees in the United States and Abroad)

1. An employee who has prepared public speaking, writing, or teaching materials in his or her private capacity must submit them for review by the employee's agency, if such materials are on matters of "official concern." Employees are reminded that communications in a private capacity over the Internet that are publicly available (e.g. blogs, bulletin boards) and are

UNCLASSIFIED (U)

on matters of official concern come within this requirement.

2. Materials are on matters of official concern if they relate to any policy, program, or operation of the employee's agency or to current U.S. foreign policies, or reasonably may be expected to affect the foreign relations of the United States.

3 FAM 4172.1-3(B) Materials on Matters Not of Official Concern

(CT:PER-584; 11-03-2005)

(Uniform State/USAID)

(Applies to all Employees in the United States and Abroad)

Speaking, teaching, and writing materials that are not on matters of official concern need not be submitted for review. Unless the material is clearly not on a subject of official concern, an employee is responsible for seeking review and delivering or publishing such material with the private capacity disclaimer noted in 3 FAM 4172.1-4. If there is doubt as to the need to seek review, the employee should seek guidance or advice from the appropriate review office noted in 3 FAM 4172.1-3(C).

3 FAM 4172.1-3(C) Review Office

(CT:PER-584; 11-03-2005)

(Uniform State/USAID)

(Applies to all Employees in the United States and Abroad)

Agency	Employees	Review Office
State	Employees in U.S. Employees abroad	Bureau of Public Affairs Chief of Mission
USAID	All employees	Public Liaison Division

3 FAM 4172.1-3(D) No Review of Dissent Channel Communications

(CT:PER-584; 11-03-2005)

(Uniform State/USAID)

(Applies to all Employees in the United States and Abroad)

Views on matters of official concern communicated through the Department's internal dissent channel are not subject to the review requirements of this subchapter.

3 FAM 4172.1-3(E) Limited Review of Materials Prepared by Special Government Employees

(CT:PER-584; 11-03-2005)

(Uniform State/USAID)

(Applies to all Employees in the United States and Abroad)

A special government employee, as defined in 18 U.S.C. 202(a), is responsible for submitting for review materials on matters of official concern prepared in his or her private capacity only if they relate to a matter to which the employee currently is assigned or to which the employee had been assigned during the previous one-year period.

3 FAM 4172.1-3(F) Limited Review of Materials Prepared by Former Employees

(CT:PER-584; 11-03-2005)

(Uniform State/USAID)

(Applies to all Employees in the United States and Abroad)

Former employees must submit for review any public speaking, writing, or teaching materials that they have prepared in accordance with applicable post-employment regulations and agreements, including those concerning the dissemination of classified information.

3 FAM 4172.1-4 Materials of Official Concern Prepared in an Employee's Private Capacity: Use of a Disclaimer

(CT:PER-584; 11-03-2005)

(Uniform State/USAID)

(Applies to all Employees in the United States and Abroad)

All public speaking, writing, and teaching materials on matters of official concern prepared in an employee's private capacity must contain an explicit disclaimer indicating that the views expressed are the employee's own views and not necessarily those of the employee's agency or the U.S. Government.

3 FAM 4172.1-5 Materials of Official Concern Prepared in an Employee's Private Capacity: Duration of Review

(CT:PER-584; 11-03-2005)

(Uniform State/USAID)

(Applies to all Employees in the United States and Abroad)

All public speaking, writing, or teaching materials on matters of official concern prepared in an employee's private capacity must be submitted for a reasonable period of review, not to exceed thirty days, to the office specified in 3 FAM 4172.1-3(C). In the case of time-sensitive materials of reasonably brief length, the period

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 3
Personnel

of review should be abbreviated in an effort to accommodate the interests of employees.

3 FAM 4172.1-6 Materials of Official Concern Prepared in an Employee's Private Capacity: Criteria for Review

3 FAM 4172.1-6(A) Protection of Classified Information and Information Statutorily Exempt from Disclosure

(CT:PER-584; 11-03-2005)

(Uniform State/USAID)

(Applies to all Employees in the United States and Abroad)

An employee must not publish any public speaking, writing, or teaching material on a matter of official concern until all classified material has been deleted from the submitted material. In addition, the employee must not publish any material that the agency believes should be protected from public disclosure under the Freedom of Information Act (FOIA), the Privacy Act, and other laws or privileges governing the disclosure of information, unless properly authorized. Such information includes, but is not limited to, information;

- Derived from personnel files
- Regarding agency deliberations prior to decisions on policy or legal matters
- Compiled for law enforcement purposes that reasonably could be expected to interfere with law enforcement proceedings

This list is exemplary. Employees who wish to obtain more complete and detailed information about information subject to public disclosure restrictions should contact the office identified in 3 FAM 4172.1-8.

3 FAM 4172.1-6(B) Preparation of Materials of Official Concern: Presumption of Private Capacity Based on Employee's Use of a Disclaimer

(CT:PER-584; 11-03-2005)

(Uniform State/USAID)

(Applies to all Employees in the United States and Abroad)

- a. Reviewing officials shall presume that all materials containing the disclaimer specified in 3 FAM 4172.1-4 have been prepared by an employee in his or her private capacity. However, if during the course of reviewing materials containing a private capacity disclaimer it is concluded that;
 - The employee's views are likely to be attributed to the U.S. Government notwithstanding the employee's use of the disclaimer noted above

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 3
Personnel

- Attribution of the employee's views to the U.S. Government is likely to impair demonstrably the foreign affairs mission of State or USAID (then the presumption of private capacity may be overcome, and if it is, the material is subject to review pursuant to 3 FAM 4172.1-2)
- b. Factors to be considered in overcoming the presumption of private capacity include, but are not necessarily limited to:
- The current or former position, rank, and/or duties of the employee
 - The relationship between the employee's position, rank, and/or duties and the subject matter of the speaking/teaching/writing
 - The likelihood that because of the employee's position, rank, and/or duties, and/or other relevant factors, the employee's views are likely to be attributed to the Government of the United States
 - The nature and magnitude of harm to the foreign affairs mission that would likely result from dissemination of the material in question
- c. The presumption that an employee engages in public speaking/teaching/writing in his or her private capacity may be overcome by a determination by the following responsible officials:

Agency	Rank of Employee	Responsible Official
State	Office director or above within the U.S. or FS-01 or above or its equivalent abroad Lower rank	Assistant Secretary for Public Affairs, Executive Secretary, or higher official Under Secretary of State for Management, Under Secretary of State for Political Affairs, Deputy Secretary of State or Secretary of State
USAID	All employees	Chief, Public Liaison Division

3 FAM 4172.1-7 Use or Publication of Materials Prepared in an Employee's Private Capacity That Have Been Submitted for Review

(CT:PER-584; 11-03-2005)

(Uniform State/USAID)

(Applies to all Employees in the United States and Abroad)

An employee may use, issue, or publish materials on matters of official concern that have been submitted for review, and for which the presumption of private capacity has not been overcome, upon expiration of the designated period of

UNCLASSIFIED (U)

comment and review regardless of the final content of such materials so long as they do not contain information that is classified or otherwise exempt from disclosure as described in 3 FAM 4172.1-6(A).

3 FAM 4172.1-8 Information Management

(CT:PER-760; 12-29-2014)

(Uniform State/USAID)

(Applies to all Employees in the United States and Abroad)

Personnel responsible for clearing material in accordance with 3 FAM 4172.1-3(B) will consult, as necessary, with appropriate agency components possessing knowledge and expertise in the classification of government information and the protection of information from public disclosure under the FOIA and the Privacy Act and other laws or privileges governing the disclosure of information. The appropriate components will include, among others:

Agency	Office
State	Office of Information Programs and Services (A/GIS/IPS) and Legal Adviser's Office (L)
USAID	Office of Public Information

3 FAM 4172.2 Ethics Considerations

(CT:PER-584; 11-03-2005)

(Uniform State/USAID)

(Applies to all Employees in the United States and Abroad)

- a. When engaging in speaking, writing, and teaching, an employee must comply with applicable laws and regulations, including the Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR Part 2635) and laws referenced in that regulation. An employee may consult the Department's ethics program website for guidance about these laws and regulations or may seek advice from L/EMP/Ethics. Key considerations are briefly summarized below.
- b. When engaging in speaking, writing, or teaching in his or her personal capacity, an employee may not accept compensation from a foreign government or, subject to an exception for certain teaching, if the activity "relates to the employee's official duties." Also, certain high-level employees must comply with outside earned income limitations and a requirement to seek advance authorization for compensated teaching. Depending on the circumstances, an employee may be able to accept travel or travel expenses. An employee may not use or permit the use of his or her official title in connection with the activity except pursuant to certain exceptions, or use the Government's property, nonpublic information, or time (including the time of a subordinate)

UNCLASSIFIED (U)

for other than authorized purposes. (Separately, 3 FAM 4172.1 requires that all public speaking, writing, and teaching materials on matters of official concern contain a disclaimer.) If abroad, see also 3 FAM 4120, "Employee Responsibilities Abroad."

- c. When engaging in speaking, writing, or teaching as part of his or her official duties, an employee may not accept compensation for the activity from any source other than the U.S. Government. (The Department can sometimes benefit from a non-federal source's offer of travel or travel expenses if acceptance is in accordance with applicable laws and procedures). An employee may use his or her official title for purposes of identification since the employee will have been authorized to engage in the activity in an official capacity.

3 FAM 4173 SPEECHES AND INTERVIEWS IN AN OFFICIAL CAPACITY

3 FAM 4173.1 Speaking in the United States

(CT:PER-584; 11-03-2005)

(Uniform State/USAID)

(Applies to all Employees in the United States and Abroad)

- a. All invitations for an employee to speak, lecture, or participate in conferences in the United States, in his or her official capacity, on a subject of official concern under 3 FAM 4172.1, must be referred for acceptance to the appropriate review office in the employee's agency noted in 3 FAM 4172.1-3(B).
- b. The text or outline of each speech or lecture by an employee of the rank of office director or above on a matter of official concern, must be submitted for preliminary clearance to the office within that employee's agency concerned with the subject matter of the speech or lecture and then for final clearance by the appropriate review office. A subordinate officer must submit the text of such a speech or lecture to his or her own office director or official of comparable rank who may either disapprove the text or approve it and refer it for further review by the offices concerned with the subject matter of the speech or lecture and by the appropriate review office.
- c. In informal presentations, professional meetings, conferences, and panel discussions where, because of the nature of the public appearance, no prepared script or outline will be available for review, the employee is responsible for ensuring that his or her remarks involve no violation of security, are consistent with U.S. foreign policy, and will not adversely affect U.S. foreign relations or the foreign affairs mission of the United States.

3 FAM 4173.2 Speaking and Interviews Abroad

3 FAM 4173.2-1 Authorization

(CT:PER-584; 11-03-2005)

(Uniform State/USAID)

(Applies to all Employees in the United States and Abroad)

With prior approval of the chief of mission, or the chief of mission's designee, an employee abroad may, in his or her official capacity, give public speeches, lectures, interviews, and participate in other formal discussions of government policy. Prior interagency consultation on important public statements is expected, where appropriate.

3 FAM 4173.2-2 Topics to Be Avoided

(CT:PER-584; 11-03-2005)

(Uniform State/USAID)

(Applies to all Employees in the United States and Abroad)

An employee abroad may not allude in public speeches or newspaper interviews to disputes between governments, or to any matter of official concern pending at any post, except by the direction or with the authorization of the chief of mission, or the chief of mission's designee.

3 FAM 4173.3 Selection of Audiences

(CT:PER-584; 11-03-2005)

(Uniform State/USAID)

(Applies to all Employees in the United States and Abroad)

The Department of State and USAID are committed to the highest standards of equality and equal opportunity. For public speaking, both in the United States and abroad, should be chosen with this commitment in mind.

3 FAM 4174 WRITING

3 FAM 4174.1 Acting as Correspondent for Communications Media

(CT:PER-584; 11-03-2005)

(Uniform State/USAID)

(Applies to all Employees in the United States and Abroad)

Certain employees carry on active liaison with representatives of communications media as part of their official responsibilities. An employee should seek advice

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 3
Personnel

from L/EMP/Ethics before serving as correspondent for any newspaper, press syndicate, association, or other media to ensure that the activity will not conflict with the employee's official duties.

3 FAM 4174.2 Writing in Official Capacity for External Publication

(CT:PER-584; 11-03-2005)

(Uniform State/USAID)

(Applies to all Employees in the United States and Abroad)

- a. To ensure consistency with U.S. policy, heads of State and USAID establishments abroad and employees in the United States with the rank of office director or above must submit for clearance by the appropriate review office all written material prepared in an official capacity for external publication.
- b. Preliminary clearances for the publication of official writing for external publications must first be obtained from appropriate offices of the agency concerned with the subject matter. Subordinate personnel must, after obtaining any necessary preliminary substantive clearances from appropriate offices of the agency concerned with the subject matter, submit such material for;
 - The head of their establishment abroad, if serving abroad
 - Their office director or officer of comparable rank if assigned in the United States

NOTE: They may either disapprove the material or approve it and refer it for further review by the appropriate office named in 3 FAM 4172.1-3(C).

3 FAM 4174.3 Writing on Matters of Official Concern in a Private Capacity

(CT:PER-584; 11-03-2005)

(Uniform State/USAID)

(Applies to all Employees in the United States and Abroad)

All books, articles, and other manuscripts or materials on matters of official concern prepared for publication by an employee in a private capacity shall be submitted for review in accordance with procedures in 3 FAM 4172.1. To avoid possible embarrassment, employees should not make commitments to publishers before the thirty-day review period has ended.

3 FAM 4175 CROSS REFERENCE

(CT:PER-584; 11-03-2005)

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 3
Personnel

(Uniform State/USAID)

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Additional information on this subject is published in 10 FAM 120, Remarks and Writings for the Media and General Public.

3 FAM 4176 THROUGH 4179 UNASSIGNED